

EXHIBIT - 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 6 1989

Mr. John Andrews
Environmental Planner
Swinomish Tribal Community
P.O. Box 817
950 Moorage Way
LaConner, Washington 98257

OFFICE OF
WATER

Dear Mr. Andrews:

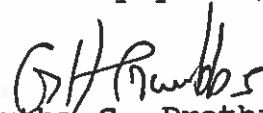
Thank you for your letter expressing concern over the timely processing of the section 106 Water Quality Planning and Management grant to the Swinomish Tribe. As indicated in our telephone conversations with you, we have delayed our formal response because the grants staff was giving priority to processing the Swinomish application prior to the end of the FY 1989 fiscal year.

I am happy to inform you that the Assistant Administrator for Water concurred with the EPA Regional Office's recommendation that the Swinomish application for treatment as a State be approved on September 27, 1989. I also understand that the Regional Office made the grant award to the Swinomish Tribe prior to the end of the fiscal year.

Unfortunately, section 518 of the Clean Water Act prevents EPA from awarding or committing funds to a Tribe prior to its qualifying for treatment as a State status. As you know, in the case of the Swinomish Tribe, there were several delays in the Region's processing of the Tribe's application due to some missing elements and adverse comments submitted by the State of Washington. The Agency has taken the necessary steps to assure that the amount of funds available to Indian Tribes nationally will not decrease because of the time it has taken to process the initial section 106 awards.

I wish the Swinomish Tribe success in carrying out current and future water quality planning and management activities. Please let me know if I can be of further assistance, or feel free to contact Linda Wilbur, Chief of the Regional Operations and Program Support Branch on (202) 382-5392.

Sincerely yours,


Martha G. Prothro
Director

Office of Water Regulations and Standards

DOCUMENTATION OF TRIBAL PRIMACY TO
SATISFY EPA 106 GRANT REQUIREMENTS

Prior to the award of grants to Tribes under section 106 of the Clean Water Act, Tribes must qualify as states under EPA guidelines.

Section 518(e) of the Act establishes four requirements which Tribes must meet to be treated as a state. These are:

1. Proof that the Tribe is Federally recognized;
2. Documentation that the Tribe performs essential sovereign functions;
3. Documentation of Tribal authority to manage and protect their water resources; and
4. Description of Tribal capability to administer and manage environmental programs.

The following document addresses and substantiates these four requirements.

1. Proof of Federal Recognition

The Swinomish Indian Tribal Community is a federally recognized Indian Tribe, organized pursuant to Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. 476) and is presided over by its constitutionally formed governing body, the Swinomish Indian Senate.

As published in the December 29, 1988 Federal Register/Vol. 53/No. 250, on page 52829, the Tribe is officially recognized as eligible to receive BIA services. (Attachment 1)

2. Substantial Powers and Duties

By authority of the Constitution and Bylaws of the Swinomish Indian Tribal Community, the Swinomish Indian Senate is the governing body of the Tribe as found in Article III, Section 1. (Attachment 2)

Originally adopted in 1935, the Constitution as amended, contains;

- Tribal name and legal territory
- Tribal membership requirements
- governing body make-up, election, and powers
- bill of rights regarding; voting, equal opportunity, freedom of expression, and due legal process
- Tribal land ownership and leasing

The enumerated powers of the Senate are found in Article VI, Section I of the Constitution and authorize the Senate to act on the Tribe's behalf to:

- negotiate with Federal, State, and local governments;
- impose taxes and license fees upon the Reservation population;
- enact resolutions and ordinances governing conduct of the Reservation population in providing for maintenance of law and order and establishing a Tribal Court system; and
- safeguard and promote the peace, safety, and general welfare of the Reservation population.

Additional Senate authority is found under their Reserved and Additional Powers, Article VI, Section 4 and 5. These, respectively, empower the Tribe to exercise their traditionally vested rights and powers not found in the Constitution, and to regulate all land uses within the Reservation through their land use zoning powers.

Under the adopted ByLaws, a description of the Senate organization includes:

- duties of appointed officers ;
- Senate membership requirements;
- time of annual election and general council meeting;
- quorum requirements; and
- requirements for adoption of ordinances and resolutions.

Nomination for election is by petition. Annual elections and a general council meeting are held in February. The Tribal membership constitutes the General Council and a report of the past year's accomplishments and proceeding year's plan are reported to the Council by the Senate. Senate officers are internally elected for a five year period and appoint committees to report to them. (See Attachment 3 for general organization.)

The Swinomish Tribal Senate maintains that the adopted regulatory ordinances of the Swinomish Tribal Code apply to Indian and non-Indian activities and lands within Reservation boundaries. Recent Federal Court decisions have upheld that authority. This would certainly apply to water quality protection, since this affects the health and welfare of the entire Reservation.

Ordinances adopted by the Senate into Tribal Code include:

- o Interim Water Code, establishing Tribal rights over waters of the Reservation and prohibiting water withdrawal and use if it adversely affects the Tribe.
- o Health and Sanitation Code, establishing domestic water and sewage disposal facility standards, biocide regulations and addressing other health and sanitation matters.
- o Swinomish Utility and Environmental Services Ordinance, defining the policies of, and organization for, drinking water, wastewater, and solid waste utility management.

- o Tribal Environmental Policy Act, setting out an environmental impact checklist, scoping and assessment process.
- o Swinomish Zoning Ordinance, delineating land use area designations, allowable uses and the land use development permit process.
- o Swinomish Coastal Zone Plan, establishing goals, policies and performance standards for land use activities on the Reservation with special emphasis on impacts to shoreline and marine resources.
- o Swinomish Cultural and Environmental Protection Agency Ordinance, which establishes a five member administrative and appellate body to protect air and water quality and control hazardous waste and pesticides. Their primary responsibilities are to recommend environmental policies and formulate an environmental protection plan, negotiate cooperative agreements with all government levels, seek state and federal agency support for Tribal environmental programs, and hear appeals from parties affected by Tribal actions as part of this program.

3. Tribal Water Resource Authority

The Tribe retains Allan Olsen as Chief Legal Counsel, Rusty Kuntze as Attorney, and Richard Du Bey as retained environmental counsel to interpret and draft laws protecting Tribal interests. Enclosed as Attachment 4, are two documents describing Tribal authority to regulate water resources. The first, by Richard Du Bey is a general analysis of Tribal Authority. The second, by Allan Olson, more specifically describes Swinomish Tribal authority for purposes of this document.

4. Tribal Capability

The Tribe's capability to carry out water quality management can be satisfied by the existing staff. The planning staff consists of the General Manager/Planning Director, an Assistant Planner, Environmental Planner, and a Facilities Projects Manager. A full-time Tribal Attorney and part-time Associate Attorney provide direct legal support to the Tribe and Planning Staff.

Both the General Manager/Planning Director and Tribal Attorney have been overseeing the planning, economic development, and legal affairs of the Tribe for 10 and 9 years, respectively. The General Manager holds a Masters Degree in Geography and Environmental Planning and is completing a Doctoral degree in Urban Planning. He is a member of the American Institute of Certified Planners. The Tribal Attorney holds a Juris Doctoral Degree and is licensed to practice law in Washington, the U.S. federal courts, and the Swinomish Tribal Court.

The Associate Planner holds a B.A. degree in Environmental Planning and has worked for the Tribe for over five years. The Environmental Planner holds a Masters Degree in Cultural Geography and has worked for the Tribe for almost a year. He has had over seven years management experience in non-point water pollution control programs.

The Facilities Project Manager has a Professional Engineering degree and has served as public works director for metropolitan municipalities for over two decades.

The length of staff service indicates Tribal resourcefulness and initiative as well as stability.

Representative programs managed or overseen by the Tribe include:

- Swinomish Utility Authority, an independent sub-unit of Tribal government that is responsible for the safe, cost-effective, and self-sufficient operation and management of drinking water, wastewater, and solid waste utilities. As part of this program, older sewer lines are being cleaned and sealed to prevent groundwater contamination.

- Tribal Health Program. This includes caring for the basic health needs of the Tribal Community members, as well as programs implementing the Health and Sanitation Code, including environmental health programs, and community safety. As part of the health program, the Tribe's drinking water system is regularly sampled in conformance to federal Safe Drinking Water Act requirements.

- Land Use Planning and Zoning. The Draft Swinomish Comprehensive Plan is the culmination of a joint planning effort by the Swinomish Community and Skagit County Planning Department resulting from a Memorandum of Understanding signed in March of 1988.

The Plan lists Tribally expressed goals and policies aimed at guiding and regulating land uses while preserving and protecting the natural environment and Tribal cultural values. The Plan seeks to identify and restrict population growth levels for the Reservation, and provide suitable land supply to meet these determined growth levels. The Plan assures the protection of identified environmental, cultural, and natural resources including groundwater recharge areas, streams, and shorelines, from adverse urbanization. Underlying and directing the Plan is the Tribe's unique heritage and sovereignty and commitment to preserving their environmental and cultural heritage.

- Drinking Water Quality Protection. The Tribe has applied for a grant to delineate a wellhead protection area around three wells supplying drinking water to both Tribal and non-Tribal residences, commercial enterprises, and administrative buildings. This is the largest public water supply system on the

Reservation. The grant provides for joint responsibilities between the USGS and Tribe to determine the recharge area surrounding the wells. The funding source is the Centennial Clean Water funds administered by the state Department of Ecology. If successful, funding would be available in October or November of 1989.

- Non-Point Source Pollution. The Tribe has taken the lead in three programs to address non-point source pollution affecting Skagit and Similk Bays. These are described below.

1. Wastewater facilities planning by the Tribe will result in the construction of a sewer trunk line and service to over 200 homes now served by outdated septic systems and a failing primary treatment system. The improvements, in addition to improved on-site wastewater disposal regulations, will eliminate much of the bacterial pollution affecting northern Skagit Bay.

2. The Tribe is a member of the Skagit System Cooperative, a three-Tribe fisheries management organization. The Cooperative is presently gathering and cataloging land use, topography, and non-point pollution data on Skagit River tributaries as part of its overall fisheries evaluation. In 1990, they will cooperate with Skagit County in a multi-year water quality monitoring program within the Nookachamps River basin. Seven or more stream and lake sites will have nitrate, dissolved oxygen, coliform bacteria, turbidity, and b.o.d. samples collected monthly to determine condition of fisheries habitat and Basin water quality. This effort is being funded by the Department of Ecology.

3. The Tribe and Skagit County have jointly been awarded a Section 205J grant to develop a non-point protection program affecting the marine waters adjacent to the Reservation.

Tribal Accounting and Procurement

Certification of the Tribes accounting and procurement system was provided by a Certified Public Accountant in 1989. A copy of this certification is included as Attachment 5.

Comprehensive Governmental Authority

Tribal mechanisms for carrying out its executive, legislative, and judicial functions have been described under the section, Substantial Powers and Duties. The ability, or authority to enact, administer, and enforce regulations resides wholly within the Tribal Constitution and ByLaws and by their formal adoption by Tribal members and approval by the BIA. Specifically, the Senate powers to employ legal counsel, levy taxes, enact resolutions and ordinances, promulgate and enforce ordinances, and provide a police and court system, give the Senate the complimentary range of powers required to govern the Reservation and tribal community

ADDENDUM TO LEGAL ANALYSIS
OF
SWINOMISH TRIBAL AUTHORITY TO REGULATE WATER RESOURCES

The Swinomish Indian Tribal Community ("SITC"), is a federally recognized Indian Tribe reorganized pursuant to Section 16 of the Indian Reorganization Act of 1934 that occupies the Swinomish Indian Reservation in Skagit County, Washington. The SITC is comprised of approximately 650 members that represent four aboriginal Tribes that were all signatories to the Treaty of Point Elliott which was signed January 22, 1855, ratified by Congress on March 8, 1859 and proclaimed by the President on April 11, 1859. The four Tribes, Lower Skagit, Kikiallus, Swinomish, and Samish, relocated to the Swinomish Indian Reservation after the Treaty was signed. The Reservation was reserved in the Treaty and defined as the "peninsula at the southeast end of Perry's Island". On September 9, 1873, President Grant established a northern boundary line by executive order separating the "peninsula" from the remainder of Perry's Island which is known today as Fidalgo Island.

By authority of Section 16 of the Indian Reorganization Act (25 U.S.C. 476), the Indian members of the four aboriginal Tribes residing on the Swinomish Reservation in 1935 elected to reorganize as a single reservation government and adopted the Swinomish Constitution and Bylaws by majority vote at an election conducted by the United States Bureau of Indian Affairs on November 16, 1935, and approved by the United States Secretary of the Interior on January 27, 1936.

The Constitution and Bylaws have been lawfully amended four times, in 1949, 1950, 1966, and 1985. As amended, the Constitution vests legislative authority in the eleven member "Swinomish Indian Senate", the governing body of the Tribe. Under Article IV of the Constitution, the Senate possesses the power and authority to regulate and govern activities on the Swinomish Reservation. This authority extends to all persons, Indian and non-Indian, within the Reservation and includes fee lands (regardless of ownership) as well as Trust lands owned by the United States in trust for the Tribe or individual Indians. Article IV Section 1K provides in pertinent part as follows:

Section 1. Enumerated Powers. - The senate of the Swinomish Indian Reservation shall exercise the following powers, subject to any limitations imposed by the statutes or the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this constitution and the attached by-laws:

(K) To promulgate and enforce ordinances, which shall be

subject to review by the Secretary of the Interior.

(a) governing the conduct of all persons within the territory of the Swinomish Indian Reservation;

(c) providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers.

Pursuant to Article IV 1(k)(c), the Tribe has established a Tribal Court System and a Law Enforcement Department. The Law and Order Code specifically defines the jurisdiction and authority of the Tribal Court and Law Enforcement Department as including authority over all persons, Indian and non-Indian, and all activities within the exterior boundaries of the Reservation subject to applicable provisions of Federal Law.

Authority to promulgate water resource laws and regulation is provided in Article IV Section 1.k (referred to above), 1.1 (regulatory trade and use and disposition of property within the Reservation), h (levying taxes), and Section 5.a (zoning and land use).

State regulatory authority over the Swinomish Reservation adopted pursuant to Public Law 83-280, the federal grant of authority to States, is limited to the provisions of R.C.W. 37.12.010 et. seq. which applies uniformly to all Indian Reservations in Washington State. Although additional jurisdiction was assumed pursuant to a request by the Tribe more than 25 years ago, that jurisdiction was returned (retroceded) to the United States in 1989 pursuant to an act of the Washington State legislature.

As a result of the retrocession legislation, the Swinomish Tribe receives an annual federal appropriation of \$150,000.00. In addition, the Tribe annually allocates approximately \$75,000 in Tribal funds to support law enforcement activities.

Submitted this 28th day of June 1989.

Allan E. Olson

Tribal Attorney

EPA CLEAN WATER ACT PRIMACY REQUIREMENTS

Subject: Additional EPA Requirement for Treatment as a State

The EPA listed four requirements for Tribes to address to be considered as a state for water management grants. In addition, Section 504 of the Clean Water Act requires the documentation of emergency powers to restrain water borne pollutant discharges. Contingency plans to address such discharges were also required.

The following narrative documents the response system that exists to enable the Tribe to control pollutant discharges.

Description of Tribal Authority to Control Pollutant Discharges.

Tribally adopted Ordinances and Codes form the basis for an emergency response mechanism to any planned or accidental discharge of pollutants potentially affecting human or wildlife health in fresh or marine waters of the Reservation.

Authority for adoption, promulgation, and enforcement of ordinances as well as establishment of law and order resides with the Swinomish Indian Senate. This is found in the Tribally Adopted Constitution under Article VI, Powers of the Senate, Section I (k), Enumerated Powers. (See Attachment 2 in our application for Tribal primacy under the Clean Water Act.)

Under Title 5 of the Tribally adopted Codes, Criminal Offenses, Chapter 5-7.250, Violation of Tribal Ordinances or Resolutions, violation of an Ordinance or Resolution is an offense and subject to conviction.

Title 15, entitled Swinomish Interim Water Code, defines waters of the Reservation under Chapter 15-1.020 Waters of the Reservation Defined, as those waters located upon or bordering the Swinomish Indian Reservation both surface and subsurface, as well as those reserved to the Tribe by the United States.

Under Chapter 15-1.030, Prohibition, it is unlawful to take any action substantially affecting the waters of the Reservation.

Under Chapter 15-1.040, and 15-1.050, Enforcement and Penalties, respectively, the Swinomish Planning Department must investigate water uses and alone, or with Tribal Police, inspect possible violations. If such use or other actions substantially affect Reservation waters, it is a civil offense and carries a fine and possible water rights forfeiture.

In addition, under Title 16, Health and Sanitation, Section XII, Enforcement, Sub-section 3. Emergencies, any activity that poses a threat to human health may be investigated by the Health Administrator or Sanitarian, and if in violation, ordered to immediately cease. To document the severity of pollution, the Tribe has access to a water quality analysis laboratories in Mount Vernon and Seattle. Sub-section 6. Correction of Harmful Situations, directs the Board of Health to correct a violation if the responsible party fails to do so.

The Swinomish Tribal Court, established under Title 2 and Chapter 2-4.010 Jurisdiction, gives the Court jurisdiction over civil and criminal matters. Chapter 7, Tribal Police Officers, empowers them to investigate and prevent all violations of any law or regulation.

In summary, the Tribe has Constitutionally derived authority and promulgated ordinances to own, manage, and protect defined Reservation waters. Any polluting discharge into these waters can be investigated and acted upon by two Tribal agencies immediately upon notification. Identified violators can be fined and water quality restoration required of the responsible party or carried out by the Tribe.

In combination and acting in concert, these Codes provide the framework for an emergency response system should the need arise for an immediate response to a health threatening discharge of a pollution causing substance into Tribal waters.

The Tribe has no formally adopted contingency plan and would apply for that as part of a later federal or state grant to develop one.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

RECEIVED

JAN 31 2001

TRIBAL CHAIRMAN

JAN 26 2001

Brian Cladoosby, Chair
Swinomish Indian Senate
Swinomish Tribal Community
P.O. Box 817
LaConner, WA 98257

Dear Mr. Cladoosby,

Brian

EPA is pleased to approve the following documents, establishing eligibility for the Swinomish Tribal Community to receive funding under Section 319 of the Clean Water Act: 1) Application for "treatment as state," 2) Nonpoint Source Assessment Report, and 3) Nonpoint Source Management Program. This approval is based on legal analysis of the "treatment as state" application by Regional Counsel, review and approval of documents by the Nonpoint Source Program in the Office of Ecosystems and Communities, and the experience of the Tribal Office.

Please note that we are specifically approving only those portions of these documents that *pertain to waters of a reservation*. We are interpreting this to mean that the Tribe may use CWA grant funds outside the Reservation or tribal trust lands if the eligible activity pertains to management of the waters within the Reservation or tribal trust lands, and this relationship is explained in its work plan. If the work plan includes such off-reservation activities, the grant agreement will condition the use of the funds on the Tribe obtaining necessary access agreements or permission to do such activities because the CWA does not provide additional authority over rights of access to off-reservation waters.

The nonpoint source assessment reports and management programs also include information and planned activities for waters in treaty-reserved "usual and accustomed" areas outside of reservations which tribes have traditionally used for hunting, fishing, and gathering. These may be important aspects of tribes' overall strategies to reduce the impacts of nonpoint source pollution on tribal resources. However, activities that do not pertain to waters of the reservation are outside the scope of tribal authority under section 518 of the CWA, as presently interpreted, and cannot be approved or funded.

Now that eligibility is established, the Swinomish Tribe should submit a work plan for \$30,000 FY 2001 base funding under 319 to Robin Slate by February 16, 2001. You may also submit a project summary proposal for \$50,000 to \$100,000 to EPA Headquarters (cc. the Région) to compete for watershed funds by February 5, 2001. Please see *Guidelines on Awarding Section 319 Grants to Indian Tribes in FY 2001* for further details. You may call Teena Reichgott, Nonpoint Source Program Coordinator at 206-553-1601 if you have questions.

Congratulations. We look forward to working with you as you implement your Nonpoint Source Control Program.

Sincerely,



Chuck Findley
Acting Regional Administrator

cc: Robin Slate, EPA
Alan Moomaw, EPA
Teena Reichgott, EPA
Ann Prezyna, EPA
Lauren Rich, Swinomish

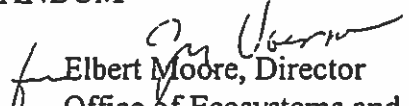


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

Reply to
Attn off: ECO-087

MEMORANDUM

JAN 26 2001

FROM:  Elbert Moore, Director
Office of Ecosystems and Communities

TO: Chuck Findley
Acting Regional Administrator

SUBJECT: Approval of Documents for Eligibility under Section 319 of the Clean Water Act
for the following two Tribes: Quinalt and Swinomish

I am pleased to recommend for your approval the following documents from two tribes in our region, making them eligible to receive funding under Section 319 of the Clean Water Act: 1) Applications for "treatment as state," 2) Nonpoint Source Assessment Reports, and 3) Nonpoint Source Management Programs.

The FY 2001 budget authorizes EPA to award nonpoint source pollution control grants to Indian Tribes under Section 319 of the Clean Water Act in an amount that exceeds 1/3% of the total appropriation for thesecond consecutive year. In order to be eligible to receive these funds, tribes must have approved nonpoint source assessment reports, management programs, and TAS status. Two tribes in Region 10 submitted the eligibility documents in the fall and winter of 2000. These tribes are: the Quinalt Indian Nation of Taholah, WA and the Swinomish Tribal Community of LaConner, WA.

Please note that we are specifically approving only those portions of the assessments and management programs that *pertain to waters of a reservation*. We are interpreting this to mean that CWA grant funds awarded to an Indian tribe may be used to address nonpoint source impacts outside a reservation if actions used to assess and manage these sources pertain to the management of waters within the reservation. The nonpoint source assessment reports and management programs also include information and planned activities for waters in treaty-reserved "usual and accustomed" areas outside of reservations which tribes have traditionally used for hunting, fishing, and gathering. These may be important aspects of tribes' overall strategies to reduce the impacts of nonpoint source pollution on tribal resources. However, activities that do not pertain to waters of the reservation are outside the scope of tribal authority under section 518 of the CWA, as presently interpreted, and cannot be approved or funded.

Once EPA has approved the eligibility documents, tribal work plans for \$30,000 base programs will be reviewed and approved by the Regional Office. Eligible tribes may also submit proposals of between \$50,000 and \$100,000 for watershed projects through a nationally competitive process. Awards are anticipated for late May or June of this year.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

January 26, 2001

Reply to
Attn of: ORC-158

MEMORANDUM

SUBJECT: Swinomish Indian Tribal Community Application for "Treatment as a State" for Nonpoint Sources of Water Pollution Program Purposes under Section 319 of the Clean Water Act

FROM: Ann E. Prezyna *AEP*
Deputy Regional Counsel

TO: Elbert Moore, Director
Office of Ecosystems and Communities

On January 9, 2001, the Swinomish Tribe submitted its Nonpoint Pollution Source Assessment and Management Plan, legal statement, and supporting documentation for approval under section 319(h) of the federal Clean Water Act ("CWA"). It is ORC's opinion that the Tribe is eligible for the assistance programs under Section 319(h) of the CWA upon approval by EPA of both a report submitted under Section 319(a) of the CWA and a management program submitted under Section 319(b) of the CWA.

The Swinomish Indian Reservation occupies the southern portion of Fidalgo Island in Washington State. The tribe communally owns about four percent of the land within the reservation and approximately 2,900 acres of tidelands around the fringes of the reservation. Individual tribal members own 50 percent of the land base, approximately 20 percent of which is leased to non-Indians. The remaining 46 percent of the land is in non-Indian ownership. See the Official Land Use Comprehensive Plan for the Swinomish Indian Reservation, adopted by the Swinomish Indian Senate on August 6, 1996.

Section 319 of the CWA provides EPA the authority to provide funding to assist an eligible tribe to develop and implement a nonpoint source management program that has been approved by EPA. To be eligible for grants under Section 319 of the CWA, a tribe must meet the criteria of Section 518(e) of the CWA as set forth in 40 C.F.R. 130.6(d) and the requirements of Section 319(h) of the CWA by obtaining EPA approval of a report under Section 319(a) of the CWA and a management program under Section 319(b) of the CWA. This memorandum addresses whether the Swinomish Tribe meets the eligibility criteria of Section 518(e) of the CWA and 40 C.F.R. Part 130 without considering whether the requirements of Section 319(h) have been met.

Sections 518(e) and (f) of the CWA authorize EPA to treat an Indian Tribe as a state for purposes of Sec. 319 of the CWA if, in part, "the functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are. . . within the borders of an Indian reservation." 33 U.S.C. § 1377(e)(2). EPA interprets Sec. 518 as limiting tribes to the management of waters "within the reservation" or that "pertain to waters of the reservation." EPA also interprets "Indian reservation" to include lands the U.S. holds in trust for an Indian tribe ("tribal trust lands"). A tribe may use CWA grant funds outside the reservation or tribal trust lands if the eligible activity pertains to management of the waters within the reservation or tribal trust lands and this relationship is explained in its work plan. If the work plan includes off-reservation activities, the grant agreement must condition the use of funds on the tribe's securing necessary access agreements or permission to do off-reservation studies.

EVALUATION OF THE SWINOMISH TRIBE'S APPLICATION

The Swinomish Tribe is a federally recognized Indian Tribe organized under section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476. Federal Recognition is addressed in Part I of the Tribe's application. The Tribe is included in the list of federally recognized tribes that the Secretary of the Interior published in the Federal Register, Volume 65, No. 49, on March 13, 2000. The Tribe is listed as the "Swinomish Indians of the Swinomish Reservation, Washington." A copy of the notice is attached as Exhibit 1 to the Tribe's application.

Section 518(e) of the Clean Water Act and EPA regulations at 40 C.F.R. Part 130.6(d) provide that an Indian Tribe may be eligible for "treatment as a state" for nonpoint sources of water pollution program under section 319 of the CWA if the tribe meets the following criteria:

1. Governmental Powers. A tribe must have a governing body for carrying out substantial government duties and powers. Parts I and II of the Tribe's application address this criterion. The Tribe is organized under a constitution and bylaws originally ratified by the Tribe in 1934 and approved by the Secretary of the Interior in 1936. They were most recently amended and ratified by the Tribe and approved by the Secretary of the Interior in 1985. The Swinomish Indian Senate is the elected governing body of the Swinomish Tribe and exercises governmental authority over all land and water within the reservation. Although the Tribe disputes the location of the northern boundary of the reservation as established by an executive order signed by President Grant, the Tribe's application for grant funds for its nonpoint source management program does not include disputed lands beyond the executive order. See footnote 1 to the Tribe's application.

2. Authority over Water Resources Within the Reservation. A tribe must demonstrate a sufficient legal basis for asserting regulatory authority over water resources within its borders. Parts II and V of the Tribe's application address this criterion. The application specifically identifies water bodies within the reservation that are subject to the Tribe's authority. The

Tribe's Constitution expressly authorizes the Tribe, acting through the Senate, to regulate all waters within the reservation, including ground water. In addition, the Senate is authorized to exercise governmental authority delegated to the Tribe by other governments and to exercise any inherent sovereign power not otherwise provided for in the Tribal Constitution. A copy of the Tribe's Constitution and Bylaws is included as Attachment 2 to the application.

3. Tribal Capability to Carry Out Non-Point Source Program A tribe must be reasonably expected to be capable of carrying out a non-point source pollution program. The Tribe has included a comprehensive Nonpoint Pollution Assessment and Management Plan, dated December 2000, with its application. Christine Reichgott has evaluated this plan and determined that it demonstrates that the Tribe is fully capable of carrying out a non-point source pollution program under the Clean Water Act.

CONCLUSION

Based on this analysis that the Swinomish Tribe meets the requirements of Section 518 of the Clean Water Act, we conclude that the Tribe is eligible for the assistance programs under Section 319 of the CWA, conditioned upon approval by EPA of the reports required under Sections 319(a) and (b) of the CWA.

cc: Christine Reichgott
Scott Sufficool
Rich McAllister



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

Reply To
Attn Of: ECO-086

MEMORANDUM

January 12, 2001

SUBJECT: Swinomish Indian Tribal Community Capability for the Nonpoint Source Program

FROM: Teena Reichgott 
Regional Nonpoint Source Program Coordinator

TO: Ann E. Prezyna
Deputy Regional Counsel

EPA is approving the Swinomish Indian Tribal Community's Nonpoint Source Assessment Report and Management Program. The approval action denotes EPA's confidence that the Tribe has capability to administer and manage the program as planned. The Swinomish Tribe has successfully conducted water programs and currently receives grants under the Clean Water Act. Robin Slate of Region 10's Tribal Office, through her personal experience working with the Tribe on water issues, has verified their capability.

Review of Swinomish

Assessment

1. Identification of navigable waters that cannot be expected to attain or maintain tribal water quality standards without the control of nonpoint source pollution. If the tribe does not have water quality standards, state standards can be used for evaluation of water quality.

The Tribe is using draft water quality standards that they have developed and Washington State water quality standards. The Tribe's proposed water quality standards designate waters as AA - extraordinary quality supporting the most sensitive use, and Class A - waters of excellent quality supporting almost all uses. Criteria are given for pH, D.O., temperature, and bacteria. It is noted that current numeric standards criteria are not adequate for attainment of "fishable" use for subsistence. Sediment and shellfish tissue data were included in the analysis of nonpoint source pollution. Excellent, detailed discussion of each watershed includes description of conditions, uses, sensitive areas, and land use patterns.

Class AA: Munk's Creek, Sneeoosh Creek, Lone Tree Creek, Fornsby Creek

Class A: marine - Turner's Bay, Silmilk Bay, Kiket Bay, North Skagit Bay, South Skagit Bay, North Swinomish Channel, South Swinomish Channel, Padilla Bay,
fresh water - Skagit River North Distributary

2. An identification of the categories and subcategories of nonpoint source pollution that contribute to the water quality problems for the individual waters identified in paragraph 1.

Table 5 lists current and potential nonpoint source impairments for each watershed linked to potentially contributing source categories. This information is supported in graphic format in the map, Figure 5. Water quality conditions and impacts of nonpoint sources are discussed for each water body.

3. A description of how the tribe will identify the best management practices needed to control each category and subcategory of nonpoint pollution identified in paragraph 2, as well as a description of how the management practices will be used to reduce the level of pollution resulting from these sources. Such factors as public participation and inter/intragovernmental coordination should be included.

For each category of nonpoint source pollution (e.g. agriculture, silviculture, etc), the most relevant information source materials for BMP identification and selection are identified along with the organizations that would be involved in selecting practices.

4. A description of any existing tribal, state, federal, and other programs that might be used for controlling nonpoint source pollution.

Existing programs for each category are identified.

Management Program

1. A description of BMPs and measures that will be used to reduce pollutant loadings resulting from each category and subcategory of nonpoint source pollution identified in the assessment report. The impact of the practices on ground water should also be discussed. The Management Program identifies BMPs in the categories identified in the Assessment Report for each geographic area.

2. A description of the programs that will be used to achieve implementation of the BMPs identified in paragraph 1.

A comprehensive listing of relevant programs is given in such a way that their links to the identified BMPs are implied.

3. A schedule containing annual milestones for the implementation of the BMPs and programs identified in paragraphs 1 and 2.

A series of tables (6-11) lay out activities to be accomplished each year for the next 4 years in each geographic area. In addition, details of nonpoint source program activities, such as planning, reporting, monitoring and education are presented in Tables 1 - 3.

4. A certification by an independent legal counsel that the laws of the tribe provide adequate authority to implement such a management program, or if there is not adequate authority, a list of additional authorities that might be necessary to implement the management program. Schedule and commitment to seek any needed additional authority. From the TAS approval document: Authority over Water Resources Within the Reservation. A tribe must demonstrate a sufficient legal basis for asserting regulatory authority over water resources within its borders. Parts II and V of the Tribe's application address this criterion. The Tribe's Constitution expressly authorizes the Tribe, acting through the Senate, to regulate all waters within the reservation, including ground water. In addition, the Senate is authorized to exercise governmental authority delegated to the Tribe by other governments and to exercise any inherent sovereign power not otherwise provided for in the Tribal Constitution. A copy of the Tribe's Constitution and Bylaws is included as Attachment 2 to the application.

5. A list and descriptions of any sources of federal and other assistance/funding (other than 319 (h)) that will be available for supporting the implementation of the nonpoint source pollution control measures identified in the tribe's nonpoint source management program. The discussion of programs includes many which can bring financial resources to bear (e.g. CREP). The budget for the Tribe's Nonpoint Source Program is a compilation of funds from Air 103, GAP, 106, 319, and in-kind.

6. Identification of any federal assistance programs and development projects to be reviewed by the tribe for their effect on water quality or inconsistency with the tribe's nonpoint source management program.

The discussions of programs and approaches include descriptions how the Tribe works with federal agencies such as NRCS.

**SWINOMISH INDIAN TRIBAL COMMUNITY
APPLICATION FOR NONPOINT SOURCE MANAGEMENT PROGRAM ELIGIBILITY
CLEAN WATER ACT, SECTION 319(H)**

1. INTRODUCTION:

In 1989, the Swinomish Indian Tribal Community, ("Community"), applied and received recognition as a "state" under Section 106 of the Federal Water Pollution Control Act, ("the Clean Water Act"), codified as 33 USC 1256 for the development of water quality protection programs.

To obtain Section 319(h) funds EPA requires documentation of tribal eligibility. The eligibility process was formerly known as qualifying for "treatment as a state." Prior to delegating the regulatory administration for programs under the Clean Water Act to Tribes, guidelines under Section 518 require Tribes to qualify for "treatment as a state." Section 518(e), codified as 33 USC 1377(e) establishes four requirements that Tribes must meet to be "treated as a state." The EPA Nonpoint Source Planning handbook describes these eligibility requirements as:

1. Be federally recognized;
2. Demonstrate that it has substantial governmental duties;
3. Demonstrate that it has legal authority or jurisdiction to carry out the purposes of the grant on tribal lands;
4. Demonstrate its capability to carry out the activities proposed in the grant application. EPA considers the approved assessment report, management program, and grant application sufficient evidence of the tribe's capability.

The following addresses and substantiates the Swinomish Indian Tribal Community meets these four requirements for Section 391(h) Nonpoint Source Program Funds.

2. FEDERAL RECOGNITION:

The Swinomish Indian Tribal Community is a federally recognized Indian Tribe, reorganized pursuant to Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. 476) and is presided over by its constitutionally formed governing body, the Swinomish Indian Senate.

The Swinomish Indians of the Swinomish Reservation, Washington are recognized in the Federal Register, Volume 65, No.49, Monday, March 13, 2000 Notices by the Department of the Interior, Bureau of Indian Affairs as one of the Indian entities recognized and eligible to receive services from the United States Bureau of Indian Affairs, (Attachment 1, Federal Register Notice).

3. GOVERNMENT DUTIES:

By authority of the Constitution and Bylaws, as amended of the Swinomish Indian Tribal

Community, the Swinomish Indian Senate is the governing body of the Tribe as found in Article III, Section 1, (Attachment 2, Swinomish Constitution and Bylaws).

Originally adopted in 1935, the Constitution as amended, includes:

1. Tribal name and legal territory
2. Tribal membership requirements;
3. Governing body membership, organization, and powers;
4. Bill of rights including voting, equal opportunity, freedom of expression, and legal due process;
5. Tribal land ownership and leasing; and
6. Constitution and ByLaw amendment process.

Under the adopted ByLaws, a description of the Senate organization includes:

1. Duties of elected officers;
2. Senate membership qualifications;
3. Time of annual election, General Council meeting, and Senate meetings;
4. Quorum requirements; and
5. Procedural requirements for adoption of ordinances and resolutions.

Senate members are nominated for election by a petition signed by at least five Community members. Elections for those Senate seats that have expired are held in February of each year during the General Council meeting. All members of the Community who are twenty-one years of age or older and who have either resided, as defined by tribal ordinance, west of Interstate 5 in Skagit County or maintained regular contact with the Reservation, are members of the General Council and may vote for Senators. Upon election, the Senators serve for a five year period. Senate officers are internally elected. The Senate may appoint committees, delegate powers and duties to them, and require them to report to the Senate. A report of the past year's accomplishments and upcoming year's plan are reported to the Council by the Senate. (Attachment 3, 1999 Annual Report with Senate Roster).

4. SUBSTANTIAL POWERS AND DUTIES

The enumerated powers of the Senate are found in Article VI, Section 1 of the Constitution and authorize the Senate to act on the Tribe's behalf. In that regard, the Senate is empowered, interalia, to:

1. Negotiate with Federal, State and local governments;
2. Impose taxes and license fees upon members of the Community and upon non-members doing business within the Reservation;
3. Promulgate and enforce ordinances governing the conduct of all persons within the Reservation providing for the maintenance of law and order and the administration of justice by establishing a Tribal Court system;
4. Safeguard and promote the peace, safety, and general welfare of the Reservation by regulating the conduct of trade and use and disposition of property within the Reservation;

5. Cultivate and preserve native culture and Indian ceremonials;
6. Adopt resolutions regulating procedure of the Senate, and of other Tribal agencies and Tribal officials; and
7. Delegate to subordinate boards any of the enumerated powers reserving the right to review any action taken thereunder.

Additional Senate authority is found under its Future, Reserved, and Additional Powers, Article VI, Sections 3, 4 and 5 respectively. These sections empower the Tribe to:

8. Exercise powers delegated by the Secretary of the Interior or authorized agency of the government;
9. Exercise the rights and powers vested in the tribes or bands of the Swinomish Indian Reservation, but not referred to in the Constitution; and
10. Regulate all land uses within the Reservation.

The Swinomish Indian Senate maintains that the adopted regulatory ordinances of the Swinomish Tribal Code apply to Indians and non-Indian activities and lands within the Reservation boundaries to safeguard the health, safety, and welfare of the Reservation community. Water quality protection affects the health, safety and welfare of the entire Reservation community since the mobile nature of pollutants in surface and ground waters makes it very difficult, programmatically to separate out the effects of water quality impairment on non-Indian fee land from those on Indian trust lands. Federal Court decisions have upheld that authority.

Waters of the Swinomish Indian Tribal Community are defined as:

- all waters reserved at any time for any purpose to the Swinomish Indian Tribal Community, and to the Swinomish Indian Reservation by the Swinomish Indian Tribal Community or by the United States including any waters that, in the course of nature or as the result of artificial works or artificial streamflow enhancement or weather modification methods, flow into or otherwise enhance such waters, as said waters are situated wholly or partly within, or bordering upon, or underlie the exterior boundaries of the Swinomish Indian Reservation;
- all waters held by the Swinomish Indian Tribal Community through prior or existing use, appropriation, purchase, contract, gift, bequest, or other means of acquisition;
- all surface and ground waters that are situated wholly or partly within (arise on, border, traverse, underlies) the hydrologic systems located within the exterior boundaries of the Swinomish Indian Reservation.

5. CAPABILITY TO CARRY OUT NONPOINT SOURCE MANAGEMENT ACTIVITIES:

The Swinomish Tribe demonstrates its capability to carry out nonpoint source management activities through the attached submittals of: the Nonpoint Source Assessment, the Nonpoint Source Management Plan, and the Nonpoint Source Grant Application, (Attachments 4, 5, and 6).

Proposed Regulated Waters

Existing and developing water quality assessments:

Nonpoint source assessments:

The primary categories of nonpoint storm water pollution sources identified on the Swinomish Indian Reservation are: a) construction and development of residential, commercial, and industrial sites, and transportation corridors; b) land disposal, including on-site septic, land treatment and unauthorized landfills; c) hydrologic modifications including channel dredging, marinas, shoreline bulkheading, impervious surface expansion, and water withdrawals; d) silviculture; e) agriculture; f) mining; g) commercial enterprises; and g) other sources, including atmospheric deposition. Enclosed as Attachment 8 are the nonpoint and watershed assessments for the Swinomish Indian Reservation.

It is the desire of the Tribe to maintain all Tribal water quality standards. Waters will be assessed for threats or impairment by nonpoint sources by watershed. The source of threat(s) or impairment(s) will be identified, and the Tribe will seek to develop watershed nonpoint source management plans to provide for water quality maintenance and/or improvement.

Watershed assessments:

The Southeast Fidalgo Island Watersheds Draining the Swinomish Reservation are: 1) North Channel, 2) South Channel, 3) South Skagit Bay, 4) North Skagit Bay, 5) Kiket Bay, and 6) Similk Bay. Please refer to Attachment 8 for the watershed assessment characterizing land status, land uses, water bodies of the watershed, water quality data for the waters, sources of potential pollutants that would impair the waters. Attachment 9 is a map depicting land ownership. Attachment 10 provides a summary of water quality for the waters proposed to be regulated under Section 303(c).

The waters subject to the proposed delegation of program authority under Section 303(c) and Section 401 of the Clean Water Act, and the current protection by the U.S. Environmental Protection Agency of the Clean Water Act are waters wholly within the exterior boundary of the Swinomish Indian Reservation. These waters and the significant and critical resources and habitat of these waters are subject to existing and potential impairments from the presence of a wide range of pollutants. The Swinomish Indian Tribal Community and Reservation population utilizes these waters, the habitat and resources of these waters for cultural and spiritual purposes, as well as for fishing, hunting, swimming, recreation and public water supply among others. Surface water quality affects the water quality of Reservation ground waters that are the primary source of drinking water for individual and public supplies. Impairment of these waters have a serious and substantial affect on the Reservation community's health, safety and welfare.

Tribal Accounting and Procurement:

Certification of the Tribes accounting and procurement system was provided by a Certified Public Accountant in 19--. A copy of this certification is included as Attachment 11.

Comprehensive Governmental Authority:

The Planning Commission,

APA--

Tribal mechanisms for carrying out its executive, legislative, and judicial functions have been described under the section, **Substantial Powers and Duties**. The ability, or authority to enact, administer, and enforce regulations resides wholly within the Tribal Constitution and ByLaws and by their formal adoption by Tribal members and approval by the BIA. Specifically, the Senate powers to employ legal counsel, levy taxes, enact resolutions and ordinances, promulgate and enforce ordinances, and provide a police and court system, give the Senate the complimentary range of powers required to govern the Reservation and tribal community.

ATTACHMENT 9
Nonpoint and Watershed Assessments
Swinomish Indian Reservation

Nonpoint source assessments:

The primary categories of nonpoint storm water pollution sources identified on the Swinomish Indian Reservation are: a) construction and development of residential, commercial and industrial sites, and transportation corridors; b) land disposal, including on-site septic, land treatment and unauthorized landfills; c) hydrologic modifications including channel dredging, marinas, shoreline bulkheading, impervious surface expansion, and water withdrawals; d) silviculture; e) agriculture; f) mining; commercial enterprises; and h) other sources, including atmospheric deposition.

a1. Construction and Land Development - Residential Nonpoint sources of pollution from residential land development and construction practices of concern include erosion and sedimentation from land clearing activities, construction activities, bacteriological, nutrient and chemical sources for post development; along with higher surface runoff.

Residential development is a significant component of land disturbing activity on the Reservation. The rate of growth, generally from approximately three to five percent annually has a substantial impact to an upland resource base of 7,200 acres. Two components of the NPS pollution program focus on site planning, construction activity, and education about individual practices in maintaining the homesite.

a2. Construction and Development - Commercial/Industrial Nonpoint sources of pollution from commercial or industrial land development and construction practices of concern include erosion and sedimentation from land clearing activities, construction activities, bacteriological and chemical sources for post development; along with higher surface runoff.

The economic zoning district, with substantial development yet to occur is located in the northeast portion of the Reservation.

a3. Construction and Development - Transportation Nonpoint sources of pollution from transportation system development of concern erosion, sedimentation, and chemical control for construction and reconstruction activities, as well as the management of surface runoff discharges and O&M procedures following development.

a4. Construction and Development - Rural Runoff Planning requires watershed, community and sub-division review to inspect constructed drainage structures and operational conditions, coordinate with Swinomish Utility, BIA, and Skagit County Public Works the planning for intercept controls downstream of source/on-site controls such as detention and filter basins, ponds, and channels. Storm sewers support the rural residential zones of the westshore, Shelter Bay and Swinomish Village, but no CSO's exist.

Again resident education and Department monitoring are essential components to achieving protection of the Reservation water resources.

b1. Land Disposal - On-site Septic Systems Bacteriological, nutrient and chemical nonpoint sources of pollution are of concern with on-site septic systems. Components of the NPS program look at site planning, construction, education for system operation and maintenance; water quality monitoring, and sanitary surveys of high risk areas and homesite's of potential failing systems.

b2. Land Disposal - Wastewater The Swinomish Indian Tribal Community currently leases land for a commercial campsite. The campsite operates a grinder pump/lagoon/forest land effluent spray treatment facility. The primary nonpoint source pollution concern is bacteriological, nutrient and chemical inputs to the marine waters and shellfish beds via overflow pipes and intermittent stream drainages that run through site.

c1. Hydrologic Modifications - Marinas Nonpoint sources of pollution from commercial and private marinas include bacteriological and chemical.

c2. Hydrologic Modifications - Shoreline Bulkheading While structural bulkheads prevent sliding of the land, and protection of the land against damage from wave action, it alters the wave action, potentially alters the marine ecological habitats and increases potential for damage to non-structurally protected shoreline. Concerns include water quality during construction, habitat assessment, protection and mitigation, streambank and shoreline erosion.

c3. Hydrologic Modifications - Channel Dredging Swinomish Channel dredging is a maintenance activity the U.S. Corps of Engineers conducts on a two, three or four year return cycle. Water quality assessment includes physical and chemical characteristics affected during activity, habitat assessment, protection and mitigation, sediment quality assessment for physical and chemical characteristics, disposal, streambank and shoreline protection.

d. Silviculture There are logging activities that take place regularly on the Reservation. These activities include road construction and maintenance, commercial harvesting, reforestation, and conversion for development. Nonpoint sources of concern from silvicultural practices include erosion and sedimentation, chemical, and stormflow.

e. Agriculture Potential subcategories for agriculture include 1) irrigated crop production, 3) hobby farms, and 4) aquaculture. Nonpoint sources of concern include erosion and sedimentation, nutrient loading, and chemical utilization.

f. Mining - Subsurface An active gravel quarry operates in the North Swinomish Channel watershed, and a gravel quarry operation may be proposed for the Similk Bay watershed. Nonpoint source pollutants of concern from this type of activity include erosion, sedimentation, and chemical releases to both surface and ground waters. Historically, a strontium mine operated from what is now private residential land within the Eagles Nest Community. The mine has been sealed by property owners and is not active. The water quality sampling of seeps and drainages in the vicinity has not occurred as of this writing

but will be incorporated in watershed planning activities.

g. Commercial Enterprises --

h1. Other - Atmospheric Deposition Tribal lands are bordered on the north by oil refineries, and as such are more susceptible to the effects of acidification processes. Acid precipitation has not been recorded nor its effects identified.

h2. Other - Waste Storage/storage tank leaks There are two unauthorized landfills on the Reservation. Both sites are closed, however nonpoint source pollution impacts to groundwater and surface drainages and seeps is of concern. Further chemical testing is necessary.

Above and below ground storage tanks exist for historic residential heating systems, agricultural and commercial sites with potential for chemical releases.

h3. Other - Highway maintenance and runoff Nonpoint source pollutants include erosion, sedimentation, chemical utilization and other O&M procedures.

h4. Other - Natural Other natural influences from wind and rain that produce periodic flooding, slope destabilization, and other erosional and water quality impacts do occur.

Increased turbidity and deposition of fine sediments in the creeks, wetlands and marine waters of the Reservation may be generated from agricultural and silvicultural practices, development and hobby farm activities, commercial trucking activities, the boat yard, and road maintenance activities on fee and trust lands. Turbidity and fine sediments can negatively affect aquatic life in Tribal waters by reducing photosynthesis of plant life, by interfering with sight feeding of fish, by smothering fish eggs and insect life, and by reducing the habitat available for food organisms and spawning of fish.

Biocides are used for road maintenance, in agricultural and forestry practices, golf course maintenance, and by residents. Depending on the concentrations, irrigation practices and precipitation the loadings of these substances in runoff and the fresh and marine waters of the Reservation may pose a threat to the mortality, growth and reproduction of fish, wildlife and invertebrates. Tribal members may also face increased health risks from exposure to herbicides and pesticides present in fish and shellfish, from wildlife that feed upon aquatic plants or animals in Reservation waters or through drinking water taken drawn from shallow ground water supplies. Although concentrations of these substances in runoff and marine waters, and the only information on the agriculture sloughs does not show elevated levels, elevated levels are possible, particularly after first flush irrigation or precipitation events, and elevated contaminant levels are documented regionally as well as nationwide.

Increases in loadings of ammonia, chlorine and oxygen-demanding substances (BOD) may result from improper operation or accidental releases at the Shelter Bay Sewage Treatment Plant, the Fish Plant, and the Kwonesum Community Septic Drain Field located on marine tidelands. Ammonia toxicity can significantly increase with changes in Ph and temperature, and can carry far

downstream from discharge sites affecting the survival, growth and reproduction of aquatic life and feeding wildlife. Aquatic wildlife survival, growth and reproduction may also be affected by very low levels of chlorine toxicity. Increases in BOD loading may also result from the Dunlap Log Yard. BOD loading results in reduced oxygen levels again affecting aquatic life survival, growth and reproduction.

High BOD, nutrient levels and fecal contamination carried in runoff to fresh and marine water resources of the Reservation may come from improper operation or accidental releases from the Shelter Bay Sewage Treatment Plant, Sewer District #1, Thousand Trails, and Kwonsum community systems, improper maintenance and/or failing septic systems, hobby farms, golf course maintenance, agricultural and silvicultural practices, and residential practices. Increased nutrient levels is suspected in the favorable establishment of the noxious weed *Spartina* seriously threatening the shellfish resources, and fisheries habitat of the Reservation. Increased nutrient levels may result in daily or seasonal changes in water quality with the stimulation of plant growth and low levels of dissolved oxygen.

Fecal contamination in Tribal waters may pose a health, safety and welfare threat from shellfish contamination, drinking supply contamination, primary and secondary spiritual, cultural or recreational contact. Fecal contamination is a serious past, present and future threat to all Tribal waters. For example data from the 1996 shellfish waters certification study found fecal contamination in Turner's Bay, and Toshi Lagoon. The 19-- study identified -- suspect or failing septic systems on the westshore affecting Similk, Kiket and North Skagit Bay watersheds. The Swinomish Channel is out of compliance with State of Ecology fecal coliform standards for Class A marine waters.

Diversion of surface flows for irrigation and drinking supply that have historically or presently take place can result in secondary effects on water quality and the integrity of aquatic communities by increasing surface water temperatures and the by the loss of physical habitat for fish and other life.

Petroleum hydrocarbons and a variety of other potential chemical inputs may result from commercial and recreational boats and vessels operation and maintenance, their support facilities including the Shelter Bay Marina, Skagit Bay Boatyard, Fisherman piers, from roads, historic dumpsites, -----.

Ph alteration of the runoff from the strontium mine----

Conductivity --salt water intrusion

Changes in stream flow characteristics resulting from land use practices, primarily increasing impervious surfaces from development activities, and reduction in precipitation retention in forestry lands, groundwater recharge and pose impacts to wetland and stream habitat, and stream channel characteristics supportive of aquatic life, and potentially drinking water supplies.

It is the desire of the Tribe to maintain all Tribal water quality standards. Waters will be assessed for threats or impairment by nonpoint sources by watershed. The source of threat(s) or impairment(s) will be identified, and the Tribe will seek to develop watershed nonpoint source

management plans to provide for water quality maintenance and/or improvement.

Watershed assessments:

The Southeast Fidalgo Island Watersheds Draining the Swinomish Reservation are: 1) North Channel, 2) South Channel, 3) South Skagit Bay, 4) North Skagit Bay, 5) Kiket Bay, and 6) Similk Bay.

The watershed assessment is a work in production characterizing land status, land uses, water bodies of the watershed, water quality data for the waters, sources of potential pollutants that would impair the waters. Attachment 5 and 9 are the maps depicting the waters and watersheds of the Reservation, and the land status that may be useful in following the following watershed descriptions. Attachment 10 provides a summary of water quality for the waters proposed for regulation under Section 303(c).

The *North Channel Watershed* is approximately 2893 acres possessing approximately 5.5 miles of Swinomish Channel and Padilla Bay shoreline. The fee land acreage is ---, and trust land acreage is ---. There are forested uplands with steep bluffs draining north and east to residential, commercial, farmland and sloughs respectively. There is at least one perennial un-named creek originating in the upland and numerous seeps found on the steep bluffs, of which one perennial seep is a source of individual drinking water supply. The un-named creek and perennial seep drains through -- fee/trust? land, emptying to agricultural sloughs. The upland is zoned forestry, the eastern lowlands agriculture, and northern lowlands economic development. It is sparsely populated with drinking water obtained from groundwater wells and surface diversions of the creek and seeps, or as in the economic enterprise zone from the Anacortes pipeline.

There is a commercial gravel extraction operation and one abandoned hazardous dumpsite in the upland forest. Adjacent to the northern boundary is an operating sawmill on a former county landfill that has visible discharge to marine waters. The economic development zone consists of a private firework and trading store enterprise, and the Tribal bingo and casino operation. State Highway 20 runs east/west through the northern third of the watershed, with County and BIA roads providing the north/south access into the forestry and agricultural zones.

Upstream discharge sources---

Primary nonpoint pollutant sources are from highway runoff, agricultural practices, construction and development activities, land disposal, mining, silviculture, and hydrologic modifications. The pollutants affecting water quality include the potential for turbidity and fine sediment increases, high BOD from nutrient loading, petroleum hydrocarbon and biocide releases---

The *South Channel Watershed* is approximately 2230 acres in size draining to approximately 5 miles of Swinomish Channel shoreline.

It consists of forested uplands draining to developed land and the Swinomish Channel. The fee land acreage is ---, and trust land acreage is ---. The South Channel is characterized by moderate slopes, one perennial creek - Monk's Creek, and numerous ephemeral drainages. Monk's Creek, once an anadromous fish bearing creek, originates in a forested wetland --- draining to the Swinomish Channel wholly within trust lands. The shoreline areas are developed supporting both -

- and -- population densities, including several hobby farms. Storm water discharge outfalls for the Swinomish Village, part of Shelter Bay and natural seeps are found the full length of the shoreline. The point source discharge of the Shelter Bay Sewage Treatment Plant, along with commercial activities from Skagit Bay Boatyard, Fish Plant and the Dunlap Log Yard. Hobby farms, community septic in the tidelands.-- The potential affects of these pollutant sources on water quality include -----

The *South Skagit Bay Watershed* is approximately 1160 acres with approximately 4.5 miles of shoreline. The area is developed and densely populated through Shelter Bay and Eagle's Nest. The steep bluffs of Eagle's Nest drain to shallow marine tideflats; marine wetlands, and a recreational beach. There is one un-named ephemeral creek that drains an old strontium mine. Storm water discharge outfalls for part of Shelter Bay reach these marine waters. The portion of McGlinn Island that drains in this watershed is undeveloped, zoned for Conservancy, it does support a seasonally used bird-hunter's shack. Sullivan Slough, the receiving waters for the LaConner Sewage Treatment Plant and adjacent agricultural lands drains into these waters from northeast of McGlinn Island. The potential pollution sources affecting water quality include ----- The fee land acreage is -- and trust land acreage is ----.

The *North Skagit Bay Watershed* is approximately 1700 acres in size with approximately 3.5 miles of shoreline. It consists of forested upland draining to residential communities and marine tideflats. The fee land acreage is -- and trust land acreage is ----. There are low bluffs along the shoreline, one perennial creek - Sneeoosh Creek, residential and utility storm water discharge sources into the marine waters and freshwater wetlands. Sneeoosh Creek, an anadromous fish bearing creek, originates in forested wetlands and is located wholly within trust lands. The shoreline is densely populated, with the southern portion of old on-site septic and community septic systems now sewerred. The northern portion of shoreline development continues to have suspect individual and ?community septic systems. There is also one abandoned and unauthorized dump located in the forested upland that began as a gravel extraction enterprise in the early 1900's. The potential pollution sources affecting water quality include -----.

The *Kiket Bay Watershed* drains approximately 1270 acres and possesses approximately 3.5 miles of shoreline. There are forested uplands draining to residential and culturally significant marine shellfish habitat. There are moderate slopes; one ephemeral creek - Toshi Creek, residential storm water discharges, and freshwater and marine wetlands. Toshi Creek also originates in forested wetlands, drains through -- fee/trust? lands. The shoreline area is densely populated with numerous on-site septic systems, a number of which were documented in 19-- as suspect systems. The potential pollution sources affecting water quality include -----.

The *Similk Bay Watershed* drains approximately 1252 acres and includes approximately 4.5 miles of shoreline. The forested uplands drain to the steep bluffs of Similk Bay, the tidelands of Turner's Bay and culturally significant marine shellfish areas. There are marine and freshwater wetlands, and one perennial creek -Turner's Creek, an anadromous fish bearing creek, originating outside the Executive Order boundaries of the Reservation draining residential and commercial non-Reservation lands. It is relatively sparsely populated, with most of the acreage zoned for forestry. There are residential and utility storm water discharges, and some suspect residential septic systems. The three Tribal public water supply wells are located in the forested upland. The

watershed has -- fee acres and --trust acres. The potential pollution sources affecting water quality include -----.

Threats to Tribal Environmental Resources

Staff developed an assessment of the environmental threats facing the Swinomish Indian Tribal Community today. These threats take the form of degradation to: the Reservation groundwater supply; surface waters, both freshwater and marine; shellfish and tideland resources; unquantified environmentally critical and culturally sensitive areas; air quality; and lack of response capability of hazard releases into the air, land and water resources of the Reservation.

Groundwater: There is a high probability of contamination of the primary source of on-Reservation drinking water, the groundwater aquifers, from historic, unregulated dumpsites, confirmed saltwater intrusion from unregulated groundwater withdrawals permitted by Washington State Department of Ecology exemptions of individual wells drawing 5000 gpd or less, and forest herbicide/pesticide applications permitted by BIA and Washington State Department of Natural Resources. This presents the need to develop regulatory control, develop aquifer supply, recharge and withdrawal data, implement sufficient water quality analysis to determine extent and range of contamination, and potentially the need to plan for substantial expansion of water utilities. Our regulatory authority is addressed through the pending Water Resources Protection Ordinance, a need to develop groundwater quality standards, and capacity building goals provide the means for training and technical data gathering with equipment purchases.

Surface Waters: The surface waters of the Reservation include perennial streams that currently do not, but may have historically provided salmon rearing habitat and are restorable. These systems are threatened in both quantity from un-permitted diversions, and quality from lost habitat and non-point pollution. The marine waters of the Reservation are subject to a point-source wastewater discharge, nonpoint stormwater discharges, and regional pollutant contributions. The point wastewater discharge site operated as a private entity until enactment of the federal NPDES program authority, at which time it was reconstituted and today operates under the Tribal Utility Authority, resulting in tribal pursuit of the NPDES program authority. The EPA with tribal involvement utilized the Washington State Department of Ecology technical expertise in developing the current NPDES permit for the discharge site. Surface water quality standards require finalization and program assumption, along with NPDES program responsibility. The Tribe desires development of nonpoint pollution regulatory controls and promotion of cooperative regional pollution abatement program opportunities. The combination of these efforts will ensure long-term aquatic resource utilization and protection. Tribal governance brings monitoring, permitting, and enforcement obligations. Our regulatory development will develop these tools while capacity building goals are directed at implementation planning, data gathering, and technical staff training to meet these obligations.

Shellfish and Tideland Resources: Shellfish habitat and tideland resources are facing destruction from an invasion of the non-native grass species - Spartina, impacts from nonpoint pollution, shoreline armoring, and un-permitted upland development. A 1995 survey identified approximately 5 acres of shellfish resource lands infested with Spartina. A management plan developed in 1995 requires control with a goal towards eradication by 2000. Eradication requires coordinated action with local, state and federal agencies. In addition these resources require development of a shellfish harvest and management program. Equipment purchases will provide the basis for technical data gathering, control, monitoring, and program development. Other planning efforts will provide for updating zoning and building regulations as directed by the 1995

Comprehensive Plan.

Sensitive Areas: Environmentally critical and culturally sensitive areas lack specific regulatory protection and physically lack field inventory and analysis to ensure avoidance of adverse impacts. Field data collection and mapping will provide the basis for regulatory development.

Air Quality: Air quality of the Reservation environment is generally good but threatened from Reservation and regional growth, existing forest and agricultural practices, sulfur dioxides from existing oil refineries, and transportation related exhausts. Air quality protection requires monitoring equipment, regulatory development for permitting activities, and enforcement.

Emergency Response: Emergency response planning is necessary to identify personnel, training, equipment needs; development of inter-local agreements with emergency response agencies; and community information processes in order to ensure Tribal capability to respond to hazard releases to air, land, and water resources effectively and efficiently.